

CAUTION: The following advice may be based on a rule that has been revised since the opinion was first issued. Consequently, the analysis reflected in the opinion may be outdated.

40 IAC 2-1-6

IC 4-2-6-9

An IDEM employee was asked to serve on an advisory board at Purdue University and, as part of her prospective service, was offered free tickets to a Purdue football game. SEC found there was no conflict of interest for the employee to sit on the board since the board was advisory only and was not encompassed by the rule. In addition, there was no violation of the Gifts rule since gifts from public institutions, such as Purdue, are permitted.

No. 05-I-10 CONFLICT OF INTEREST

GIFT RULE

State Ethics Commission
Official Advisory Opinion
September 8, 2005

Background

A state employee of Indiana Department of Environmental Management (IDEM) has been asked by Purdue University to serve on an advisory board for the Earth and Atmospheric Sciences Department (EAS). The state employee is a graduate of Purdue. Earth and Atmospheric Sciences was her college major. The two-year appointment would involve a once-a-year meeting at which she would provide advice on proposed new initiatives for the department, meet with students and faculty, communicate new external opportunities that might be important for EAS' education and research programs, and discern ways to better serve and connect with department alumni. This year's meeting will be held the day before the Purdue-Notre Dame game. She will be offered free tickets to the game.

The state employee is a supervisor of the Watershed Management Section in IDEM's Office of Water Quality. That office uses federal Clean Water Act section 319 funds to provide subgrants to governmental agencies, 501 (C)(3)s, and universities. She supervises staff who oversees grants to Purdue. However, none of those grants go to the EAS department. In the past, the state employee has been involved in proposal review and project activities that involve Purdue.

Issues

1. Is there a conflict of interest if the state employee serves on the Purdue EAS advisory board:
2. Is there a violation of the gift rule for the state employee to accept football game tickets from Purdue University?

Relevant law

Conflict of interest:

IC 4-2-6-9

A state officer or employee...

(f) cannot use state materials, funds, property, personnel, facilities, or equipment for any purpose other than state business – unless permitted in writing by agency

(g) cannot engage in outside work during business hours, unless approved in writing by agency

(h) cannot divulge confidential information except permitted by law

Conflict of Interest:

IC 4-2-6-9 (AMENDED, 2005)

(a) A state officer, an employee, or a special state appointee may not participate in any decision or vote if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

(1) The state officer, employee, or special state appointee.

(2) A member of the immediate family of the state officer, employee, or special state appointee.

(3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a trustee, a partner, or an employee.

(4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:

(1) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

(2) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(c) A written determination under subsection (b)(2) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(2) shall be filed with the appointing authority.

40 IAC 2-1-6 Acceptable gifts, favors, services, entertainment, food, drink, and honoraria

Sec. 6. (a) A state employee or special state appointee, or the spouse or unemancipated child of a state employee or special state appointee, shall not knowingly solicit, accept, or receive any gift, favor, service, entertainment, food, or drink from a person who has a business relationship with the employee's agency or is seeking to influence an action by the employee in his or her official capacity.

The following shall not be subject to this section:

- (1) Gifts, favors, services, entertainment, food, or drink from public agencies or public institutions.
- (2) Food or drink consumed at a public meeting to which at least twenty-five (25) individuals are invited. A meeting will be considered public if:
 - (A) the event is a reception or other gathering for public officials that is not arranged to solicit government procurement of goods or services;
 - (B) the employee is giving a speech or participating in a presentation in the employee's official capacity; or
 - (C) the meeting has a formal educational program that the employee is attending to assist him or her in performing official duties.
- (3) Mementos or souvenirs of nominal value.
- (4) Food or drink consumed by an employee during negotiations or other activities related to an Indiana economic development corporation economic development project.
- (5) Gifts, favors, services, entertainment, food, or drinks from relatives, so long as:
 - (A) the gifts or other items of value are not deducted as a business expense and
 - (B) the gift giver is not seeking to influence an action by an employee in his or her official capacity.

In cases involving ongoing social relationships, employees should seek a waiver under subsection (b) before accepting a gift.
- (6) Political contributions subject to IC 3-9-2 that are reported in accordance with applicable law.
- (7) Nominal refreshments offered to a state employee conducting official state business while he or she is at a workplace of a person who has a business relationship or seeks to influence official action with the employee's agency.
- (8) Discount and other promotional programs approved and made available to state employees through the state personnel department or the Indiana department of administration.

Conclusion

There is no violation of the gift rule if the state employee accepts football game tickets from Purdue. Gifts from public institutions are excluded from the gift rule.

There is no conflict of interest in the state employee's service on an advisory board for the EAS Department of Purdue. The board's function is advisory only. Advisory boards do not fall within the conflict of interest prohibition concerning service as an "officer, a director, a trustee, partner or an employee."